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(f) Effective January 16, 2019, General License No. 16D, dated December 7, 2018, is replaced and superseded in its entirety by this General License No. 16E.

Dated: January 16, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: October 25, 2021.

**Bradley T. Smith,**

Acting Director, Office of Foreign Assets Control.

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## DEPARTMENT OF EDUCATION

### 34 CFR Parts 604, 690 and 691

RIN 1840—AD46

#### **Federal-State Relationship Agreements, Federal Pell Grant Program, Academic Competitiveness Grant, and National Science and Mathematics Access To Retain Talent Grant**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations implementing the Federal Pell Grant Program to conform with changes made by the Department of Education Appropriations Act, 2012 and the Department of Education Appropriations Act, 2017. The Secretary also removes obsolete regulations for Federal-State Relationship Agreements and the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. These regulations also make technical corrections and delete references to programs that are no longer authorized or funded.

**DATES:** These final regulations are effective October 28, 2021.

#### **FOR FURTHER INFORMATION CONTACT:**

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## SUPPLEMENTARY INFORMATION:

### Executive Summary

#### *Purpose of This Regulatory Action:*

This regulatory action amends or removes various Department regulations to conform with statutory changes.

The Secretary removes and reserves 34 CFR part 604, Federal-State Relationship Agreements, to reflect that section 1203 of the Higher Education Act of 1965, as amended (HEA), was eliminated by the Higher Education Amendments of 1998, Public Law 105-244.

Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010-2011 award year. Therefore, the Secretary also removes and reserves the implementing regulations for those programs in 34 CFR part 691.

The Secretary also amends part 690 to make conforming changes that are consistent with the statutory provisions referenced above and to make technical revisions to delete references to the ACG and National SMART Grant programs, which are no longer authorized.

*Summary of the Major Provisions of this Regulatory Action:* In the final regulations we amend 34 CFR part 690 to reflect the following statutory changes to the Pell Grant Program.

#### *Duration of Student Eligibility (§ 690.6)*

In December 2011, section 309 of the Department of Education Appropriations Act, 2012 (title III of division F of the Consolidated Appropriations Act, 2012, Pub. L. 112-74) amended section 401(c)(5) of the HEA to reduce the duration of a student's eligibility to receive a Federal Pell Grant from 18 semesters (or its equivalent) to 12 semesters (or its equivalent).

#### *Calculation of a Federal Pell Grant (§ 690.62)*

In December 2011, Public Law 112-74 amended section 401(b)(4) of the HEA to change the minimum Federal Pell Grant award calculation. The law set the minimum Federal Pell Grant award for a student at 10 percent of the maximum award amount for the award year. In addition, it eliminated the provision that permitted a student who would be eligible to receive a Federal Pell Grant of between five and 10 percent of the award year's maximum award to receive an award of 10 percent of the maximum award.

*One and One-Half Federal Pell Grants in One Award Year (§§ 690.63(g), 690.64(b), 690.65(c), (d)(2), and (f), and 690.67)*

In May 2017, section 310 of the Department of Education Appropriations Act, 2017 (title III of division H of Pub. L. 115-31, the Consolidated Appropriations Act, 2017), added section 401(b)(8) to the HEA to allow a student to receive Federal Pell Grant funds for up to 150 percent of the student's Pell Grant Scheduled Award for an award year, if the student is enrolled at least half time in a certificate, associate degree, or baccalaureate degree program, effective as of the 2017-2018 award year.

Prior to the publication of these final regulations, we provided guidance in Dear Colleague Letter GEN-17-06 (available at: <https://ifap.ed.gov/dpclletters/GEN1706.html>) to institutions on how to implement the provisions of section 401(b)(8) to allow certain students to receive one and one-half Pell Grants in one award year beginning with the 2017-2018 award year.

*Costs and Benefits:* As further detailed in the *Regulatory Impact Analysis*, the statutory changes reflected in these regulations provide a substantial net benefit to students and result in transfers between the Federal Government and students.

### Significant Regulations

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

#### *Part 604—Federal-State Relationship Agreements*

*Statute:* Section 1203 of the HEA, as amended by the Education Amendments of 1980, established the procedure for State participation in the Continuing Education Outreach Program, the State Student Incentive Grant Program (currently the Leveraging Educational Assistance Partnership Program (LEAP) Program), and the Undergraduate Academic Facilities Program. States wishing to participate in these programs were required to enter into a Federal-State Relationship Agreement with the Secretary. The agreement had to contain assurances, and the means by which they would be met, relating to administration, financial management, treatment of applicants, supplement, not supplant requirements, and planning. The provisions of the agreement could not supersede any reporting requirements established by the applicable programs.

*Current Regulations:* Current 34 CFR part 604 provides that a State must enter into an agreement with the Secretary if it wishes to participate in the Continuing Education Outreach program, title I–B, with the exception of sections 116 and 117 of the HEA; the State Student Incentive Grant program (currently the LEAP Program), subpart 3 of title IV–A of the HEA; and the Undergraduate Academic Facilities Grant program, title VII–A of the HEA. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning.

*New Regulations:* We are removing and reserving 34 CFR part 604.

*Reasons:* Section 1203 of the HEA was repealed on October 7, 2008, by the Higher Education Amendments of 1998, Public Law 105–244. Therefore, the Secretary removes and reserves the implementing regulations for the Federal-State Relationship Agreements in 34 CFR part 604.

#### *Part 690—Federal Pell Grant Program*

##### *Duration of Student Eligibility (§ 690.6)*

*Statute:* Section 401(c)(5) of the HEA provides that the duration of a student's eligibility to receive a Federal Pell Grant is 12 semesters (or its equivalent).

*Current Regulations:* Current § 690.6(e) provides that if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards. A student may receive a maximum of one Scheduled Award per academic year.

*New Regulations:* Revised § 690.6(e) provides that a student may receive no more than six Scheduled Awards as determined by the Secretary.

*Reasons:* These final regulations amend § 690.6(e) to conform to amended section 401(c)(5) of the HEA, by reducing the number of Scheduled Awards a student may receive to six (or the equivalent of 12 semesters).

##### *Institutional Participation (§ 690.7(a), (d), and (e))*

*Statute:* Section 401A(c)(1) of the HEA provides that a student must be eligible for a Federal Pell Grant to qualify for an ACG or National SMART Grant. Section 401(j) of the HEA provides that no institution of higher education is eligible to participate in the Federal Pell Grant Program if that institution is ineligible to participate in the Federal Family Education Loan (FFEL) or William D. Ford Federal Direct Loan (Direct Loan) programs as a

result of a final default rate determination made by the Secretary.

*Current Regulations:* Section 690.7(a) provides that an institution may not participate in the Federal Pell Grant Program if it has at least one eligible program under § 691.2(d) and does not participate in the ACG or National SMART Grant programs, as applicable. Section 690.7(d) provides that if an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time. Section 690.7(e) provides that an institution must provide to the Secretary, within 45 days after the effective date of loss of eligibility, student-level disbursement information and an accounting of the Federal Pell Grant expenditures for that award year to the date of termination.

*New Regulations:* We are removing paragraph (a) of § 690.7 and making technical changes to the remaining paragraphs.

*Reasons:* Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010–2011 award year. Therefore, we are removing § 690.7(a), which references these two programs. With the removal of paragraph (a), current paragraphs (d) and (e) are redesignated as paragraphs (c) and (d). In redesignated paragraph (c)(1), we are removing the reference to the FFEL program and adding a reference to subpart N, which includes regulations for calculating the three-year cohort default rate and parallels the provisions in subpart M, part 668, which includes regulations for calculating a two-year cohort default rate. In redesignated paragraph (c)(2), we are revising the citations to include §§ 668.187(d) and 668.206(d) of subpart M and N, part 668, respectively, to describe the consequences of cohort default rates on an institution's ability to participate in the Federal Pell Grant Program. In redesignated paragraph (d), we are adding “or for whom the institution obtained a valid ISIR” to include the electronic equivalent of the Student Aid Report.

##### *Calculation of a Federal Pell Grant (§ 690.62(b))*

*Statute:* Section 401(b)(4) of the HEA provides that a Federal Pell Grant may not be awarded to a student if the amount of that grant for that student for any academic year is less than 10 percent of the maximum amount of a Federal Pell Grant award determined for such academic year.

*Current Regulations:* Current § 690.62(b) states that no payment may be made to a student if the student's annual award is less than \$200. However, a student who is eligible for an annual award that is equal to or greater than \$200, but less than or equal to \$400, will be awarded a Federal Pell Grant of \$400.

*New Regulations:* We are removing § 690.62(b).

*Reasons:* We are removing § 690.62(b), which has been superseded by section 401(b)(4) of the HEA. Since the 2012–2013 award year, this change in the law has been explained in the annual Dear Colleague Letter that accompanies the Pell Grant Payment and Disbursement Schedules (available at: <https://ifap.ed.gov/dpclatters/P1201.html>).

One and One-Half Federal Pell Grants in an Award Year (§§ 690.63(g), 690.64(b), 690.65(c), (d)(2), and (f), and 690.67)

*Statute:* Section 401(b)(8) of the HEA provides that a student may receive up to one and one-half consecutive Federal Pell Grant Scheduled Awards during a single award year, if the student is enrolled at least half-time in the payment period(s) for which the student receives additional Pell Grant funds in excess of 100 percent of the student's Pell Grant Scheduled Award. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program.

##### *Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(g))*

*Current Regulations:* Current § 690.63(g)(1) provides that the amount of a student's award for the award year may not exceed his or her Scheduled Federal Pell Grant award for the award year.

*New Regulations:* We are revising § 690.63(g)(1) to provide that a student is eligible to receive one and one-half of the student's Scheduled Federal Pell Grant award in the same award year.

Under new § 690.63(g)(2), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the additional one-half Scheduled Award, the student's payment is calculated using the annual award for his or her enrollment status for the payment period. The student's payment is the remaining amount of the first Scheduled Award being completed plus an amount from the additional one-half Scheduled Award in the award year up to the total

amount of the payment for the payment period.

*Reasons:* We are revising § 690.63(g)(1) to establish procedures for awarding a student with one and one-half of the student's Scheduled Award in an award year as required by section 401(b)(8) of the HEA.

The revisions to paragraph (g)(2) allow for the calculation of a student's Federal Pell Grant payment when the student is eligible to receive a payment from his or her first Scheduled Award and an additional one-half Scheduled Award in a payment period. In addition, we are making conforming changes to § 690.63(f).

**Determining the Award Year for a Federal Pell Grant Payment Period That Occurs in Two Award Years (§ 690.64(b))**

*Current Regulations:* Current § 690.64(b) provides that an institution may not make a payment that will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

*New Regulations:* We are revising current § 690.64(b) to provide that a student is eligible to receive one and one-half of the student's Scheduled Federal Pell Grant award in the same award year.

*Reasons:* We are revising § 690.64(b) to conform to section 401(b)(8) of the HEA.

**Transfer Student: Attendance at More Than One Institution During an Award Year (§ 690.65(c), (d)(2), and (f))**

*Current Regulations:* Current § 690.65(c) provides that a student who receives a Federal Pell Grant at one institution and subsequently enrolls at a second institution within the same award year may only be paid at the second institution for the period of time the student is enrolled at that institution. The institution must adjust the student's grant to ensure that funds received by the student for the award year do not exceed the student's Scheduled Federal Pell Grant for that award year.

Current § 690.65(d)(2) provides that the percentage of a student's Scheduled Federal Pell Grant used at the first institution is subtracted from 100 percent to determine the percentage of the Scheduled Federal Pell Grant the student is eligible to receive at the second institution.

Current § 690.65(f) provides that a transfer student must repay any amount received in an award year that exceeds his or her first Scheduled Federal Pell Grant.

*New Regulations:* To conform to section 401(b)(8) of the HEA, we are revising current § 690.65(c), (d)(2), and (f) to establish procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year.

*Reasons:* Section 401(b)(8) provides that an otherwise eligible student could receive more than one Federal Pell Grant in an award year. Therefore, we are establishing procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year.

**Eligibility To Receive Additional Federal Pell Grant Funds in an Amount Up to One-Half of a Scheduled Award During a Single Award Year (§ 690.67)**

*Current Regulations:* None.

*New Regulations:* New § 690.67 provides that an institution participating in the Federal Pell Grant Program must award an additional Federal Pell Grant in an amount up to one-half of a Scheduled Award to a student in an award year if the student is enrolled (1) in an eligible bachelor's or associate's degree program, or program leading to another recognized educational credential, for one or more additional payment periods during the same award year that are not fully covered by the student's initial Federal Pell Grant Scheduled Award; and (2) at least as a half-time student in the payment period(s) for which the student receives any portion of the additional Federal Pell Grant funds. This provision does not apply to students with intellectual disabilities, to the extent provided in 34 CFR part 668, subpart O, and section 484(s) of the HEA.

*Reasons:* These regulations establish procedures for awarding a student an additional Pell Grant in an amount up to one-half of his or her Scheduled Award in an award year, in accordance with the statute.

**Part 691—Academic Competitiveness Grant (ACG) and National Science and Mathematics Access To Retain Talent Grant (National SMART Grant) Programs**

*Statute:* Section 401A of the HEA established the ACG and National SMART Grant programs to assist eligible students in paying their college education expenses.

*Current Regulations:* Current 34 CFR part 691 provides guidance for the administration of the ACG and National SMART Grant programs. The ACG Program awards grants to help eligible financially needy first- and second-year undergraduate students, who complete rigorous secondary school programs of

study, meet the cost of their postsecondary education.

The National SMART Grant Program awards grants to help eligible financially needy third-, fourth-, and, in the case of a program with at least five full years, fifth-year undergraduate students who are pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering or a critical foreign language meet the cost of their postsecondary education.

*New Regulations:* We are removing and reserving 34 CFR part 691.

*Reasons:* Section 401A(g) of the HEA authorized the ACG and National SMART Grant programs only through the end of the 2010–2011 award year. Therefore, the Secretary removes and reserves the implementing regulations for the ACG and National SMART Grant programs in 34 CFR part 691.

**Waiver of Rulemaking and Delayed Effective Date:** Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA because this regulatory action merely rescinds regulations that have become obsolete due to statutory changes and revises others to conform to those changes. This regulatory action does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on this regulatory action is unnecessary.

Notice and comment is “unnecessary” when “the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.” *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012); *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001). *See also Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484 (9th Cir. 1992) (“Notice and comment is ‘unnecessary’ when ‘the regulation is technical or minor.’”) (quoting *Levesque v. Block*, 723 F.2d 175, 184 (1st Cir. 1983)).

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). In addition, this final rule has been

determined to be a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

As previously stated, because the final regulations merely reflect statutory changes and remove and update obsolete regulatory provisions, there is good cause to waive the delayed effective dates in the APA and the CRA and make the final regulations effective upon publication.

#### **Executive Orders 12866 and 13563**

##### *Regulatory Impact Analysis*

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

The final regulations will result in transfers between the Federal Government and students of more than \$100 million. Therefore, this final action is “economically significant” and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of

Information and Regulatory Affairs designated this rule as a “major rule,” as defined by 5 U.S.C. 804(2).

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations only on a reasoned determination that their benefits would justify their costs. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this

regulatory action. The final regulations are expected to have an economically significant impact on the Federal Government and students. As discussed further in the costs, benefits, and transfers section, there will be transfers between the Federal Government and students as a result of the statutory changes, which are reflected in these regulations. In this Regulatory Impact Analysis, we discuss the need for regulatory action; costs, benefits, and transfers; net budget impacts; and regulatory alternatives we considered.

#### **Need for Regulatory Action**

Over the past nine years, there have been several self-implementing statutory changes that have not been reflected in the Federal Pell Grant Program regulations. In December 2011, Public Law 112–74 amended section 401(b)(4) of the HEA to change the minimum Federal Pell Grant award calculation. The law established the minimum Federal Pell Grant award for a student at 10 percent of the maximum award amount for the award year. In addition, it eliminated the provision that permitted a student who would be eligible to receive a Federal Pell Grant of between five and 10 percent of the award year’s maximum award to receive an award of 10 percent of the maximum award. Therefore, beginning with the 2012–2013 award year, students could not receive a Federal Pell Grant unless they were eligible for at least 10 percent of the maximum award for the academic year. This change in the law has been described in the annual Dear Colleague Letter that accompanies the Pell Grant Payment and Disbursement Schedules since the 2012–2013 award year.

Section 309 of the Department of Education Appropriations Act, 2012 (title III of division F of the Consolidated Appropriations Act, 2012, Pub. L. 112–74) amended section 401(c)(5) of the HEA to reduce the duration of a student’s eligibility to receive a Federal Pell Grant from 18 semesters (or its equivalent) to 12 semesters (or its equivalent), effective beginning with the 2012–2013 award year. The calculation of the duration of a student’s eligibility includes all years of the student’s receipt of Federal Pell Grant funding. This change in the duration of students’ Federal Pell Grant eligibility is not limited to students who received their first Federal Pell Grant on or after the 2008–2009 award year, as the HEA previously provided when the duration of eligibility was 18 semesters. Although the Department issued guidance in Dear Colleague Letter GEN–13–14, the Department needs to update

its regulations to reflect this statutory change.

In May 2017, section 310 of the Department of Education Appropriations Act, 2017 (title III of division H of Pub. L. 115–31, the Consolidated Appropriations Act, 2017), added section 401(b)(8) to the HEA to allow a student to receive Federal Pell Grant funds for up to 150 percent of the student's Pell Grant Scheduled Award for an award year, if the student is enrolled at least half-time in a certificate, associate degree, or baccalaureate degree program, effective as of the 2017–2018 award year. The regulations preceding this statutory change restricted students to the maximum of one Pell award in an award year. Although the Department issued guidance via Dear Colleague Letter GEN–17–06 for the 2017–2018 award year, we need to revise our current regulations to reflect these statutory changes.

Furthermore, these regulatory changes will impact institutions' financial aid operations and the Department must revise current regulations to ensure that institutions have the correct guidance to properly disburse Pell awards.

#### Discussion of Costs, Benefits, and Transfers

The final regulations decrease the maximum number of Federal Pell Grant Scheduled Awards from nine to six and increase the annual award value from one Scheduled Award to one and one-half of a Scheduled Award. In the following sections, the Department summarizes the effects these final regulations are likely to have on students, institutions of higher education, and the Federal Government.

#### Students

The statutory changes reflected in these regulations provide a substantial net benefit to students and changes in the transfers between the Federal Government and Pell recipients. The change to allow one and a half Pell grants in an award year increases transfers to students in any given award year. Students who qualify for the additional half Pell grant may be able to reduce their borrowing needs and exit college with less debt than they would have under the previous statute and rules. Students may also consider taking additional classes during the summer semester as a result of increased funding, which could allow them to graduate earlier and enter the job market earlier. A recent study published in *Education Finance and Policy* journal found that \$1,000 per student in additional year-round Pell funding

increased summer enrollment, completion rates, and post-college earnings.<sup>1</sup>

At the time of its enactment, the Department estimated that this change would benefit approximately 905,000 Pell recipients at a cost of \$1.5 billion for the 2018–19 award year. Over the 10-year budget window, it was expected to benefit an average of 980,000 Pell recipients annually with an average additional award of approximately \$1,650.

The expiration of the Academic Competitiveness Grants (ACG) and National Science and Mathematics Access to Retain Talent (SMART) grant programs reduced transfers to students. The programs awarded ACG grants to first- and second-year undergraduates who completed a rigorous high school curriculum, and SMART Grants to third- and fourth-year undergraduates majoring in physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

Academic Competitiveness Grants were awarded to students who were eligible for a Federal Pell Grant. First-year applicants, who may receive up to \$750, also must have been first-time undergraduates who had completed a rigorous secondary school program and were enrolled or accepted for enrollment in a 2- or 4-year degree-granting institution. Second-year ACG applicants qualified for an award of up to \$1,300 if they had completed a rigorous program and maintained a cumulative grade point average of at least 3.0 during their first year as an undergraduate.

SMART Grant applicants had to maintain a cumulative GPA of at least 3.0 in the coursework required by their major to qualify for up to \$4,000 for their third and fourth years of undergraduate study. SMART Grants, in combination with the Federal Pell Grant and other student financial assistance, were not allowed to exceed the student's cost of attendance.

<sup>1</sup> Vivian Yuen Ting Liu, *Is School Out for the Summer? The Impact of Year-Round Pell Grants on Academic and Employment Outcomes of Community College Students*, *Education Finance and Policy* 2020 15:2, 241–269. Available at [www.mitpressjournals.org/doi/full/10.1162/edfp\\_a\\_00277](http://www.mitpressjournals.org/doi/full/10.1162/edfp_a_00277). “The study finds that for each \$1,000 of additional YRP grant funding, summer enrollment increases by 28 percentage points, diploma completion rates increase by 1.6 percentage points, and third-year earnings from college entry increase by \$200. For YRP-eligible students who started in a short-term program, the gains are a 2 percentage point higher certificate attainment rate, 3.6 percentage point increase in associate degree completion, and no effect on four-year transfer rates.”

In the 2010–11 award year, the final year of these programs, the Department estimated that there were 786,000 recipients of ACG grants with an average grant of \$697 and 150,000 SMART grant recipients with an average grant of \$2,560. With the sunset of the program, future students who may have qualified had to find other sources for these funds, including programs that would be affected by the higher unmet need resulting from the elimination of these grants.

Another policy that affected a segment of Pell grant recipients was the statutory change to set the minimum Pell award to 10 percent of the maximum award. This reduced the maximum expected family contribution (EFC) with which a student can be eligible, decreasing the potential pool of recipients. This change was expected to affect those at the higher end of the income range eligible for Pell Grants. As described in the Net Budget Impacts, at the time of its enactment, this was estimated to reduce transfers to recipients by \$23 million in the 2012–13 award year and \$389 million in the applicable 10-year budget window.

The statutory change to reduce a Pell recipient's lifetime limit to 12 semesters was meant to emphasize timely completion of programs. At the time of its enactment, the Department estimated that 66,000 recipients would be affected in the 2012–13 award year and that total savings over the 10-year budget window would be approximately \$2.9 billion. For students, this policy may limit their ability to transfer institutions, switch educational programs, or restart their undergraduate education and complete a program. The Pell Grant duration for a student is calculated by adding together each of the annual percentages of a student's Scheduled Award that was actually disbursed to the student. For example, a student whose 2010–2011 Federal Pell Grant Scheduled Award was \$5,550 (the maximum award that year), but who received \$2,775 because she was only enrolled for one semester, will have used 50 percent of that award year's Scheduled Award. Similarly, a student who was enrolled three-quarter time for the 2011–2012 award year would have used 75 percent of his Scheduled Award. If these examples were for the same student and she did not receive Pell Grant funds for any other award year, her total Lifetime Eligibility Used (LEU) would be 125 percent. The combination of policies—the LEU and the possibility of receiving up to 150 percent of an award in one year—means students will have to track their Pell usage carefully as they plan their educational programs.

### *Institutions*

The effect of the statutory change reflected in these final regulations on institutions will depend on the percentage of recipients who receive more than one Pell award in a given award year. Institutions might benefit if they choose to decrease the amount of institutional aid they give to students receiving both institutional grants and also Pell Grants for an additional semester, or reallocate that aid to other students. Some institutions may decide to increase tuition because of the increased availability of Pell Grants. Research from the Federal Reserve Bank of New York found a correlation between increased maximum Pell awards and tuition and fees and a reduction in institutional grants.<sup>2</sup>

If an institution spends additional revenue on academic or student support services, that would benefit all students. If the Pell Grants displace other non-institutional sources used to pay tuition (e.g., State aid or Federal loans), we would expect little financial impact on institutions.

We expect little impact on costs to institutions from increases in enrollment intensity by the marginal student, as it would require very little in additional resources. Full-time students are typically more cost-effective for institutions, given that they pay more tuition but require or use the same amount of many campus resources as part-time students. Large-scale shifts in student behavior, though, may require increasing capacity like adding sections of courses. This may be particularly true for institutions that have not historically had robust summer terms, but see increased demand for such courses due to the expanded access to Pell grants.

The actual impact of this statutory change on institutions will vary according to student behavior and institutional decision-making. In the 2018–19 award year, transfers to recipients increased by approximately \$1.3 billion.

The elimination of ACG and SMART grants eliminated these sources of funding but also costs of administering the programs for institutions. The

change in the lifetime limit also reduces the maximum amount of Pell Grants an institution may receive with respect to individual recipients. If the reduced aid prompted any students to leave school, institutions would also lose out on the net tuition revenue from those students. The effect on costs is less clear. Students may accelerate their coursework and take more credits per semester, potentially increasing the expense associated with them in any given semester. On the other hand, students may focus on their program of study sooner and take fewer classes outside their major and reduce costs by finishing faster.

### *Federal Government*

The administrative changes associated with the statutory and regulatory changes described in this rule have already been implemented and are not expected to have significant costs. The effects on the Pell Grant program are described in the *Net Budget Impacts* section of this document.

### **Net Budget Impacts**

Because Pell Grants are an entitlement to eligible recipients, changes to eligibility or award value change costs of the Pell Grant Program. These regulations increase the maximum annual award from one Scheduled Award to one and one-half of a Scheduled Award. With this change, more money may be awarded per award year over fewer award years. The Department will see increased costs in the form of Pell awards as a result of the statutory change reflected in the year-round Pell regulations. At the time of enactment the Department estimated that year-round Pell would benefit approximately 905,000 Pell recipients at a cost of \$1,502,000,000 in the 2018–19 award year and would have an estimated cost of \$16.3 billion over the 10-year budget window. This estimate was derived using the take-up rate and other student data from the 2010–11 award year when year-round Pell grants were previously available. In the 2010–11 award year students were able to receive two full Scheduled Awards rather than the current one and a half. This change was controlled for in applying the 2010–11 data to the current award year conditions. The newest iteration of year-round Pell grants has now been in place for three full award

years. Most recently, in the 2019–20 award year approximately 823,000 recipients benefitted at a cost of about \$1,300,000,000. In future estimates the Department will take into account these additional data points.

While the change to year-round Pell increased transfers to recipients, the implementation of the 10 percent minimum award and 12 semester lifetime Pell eligibility limit reflected in these regulations reduced the cost of the Pell Grant program. The statutory change to set the minimum Pell award to 10 percent of the maximum award reduces the maximum EFC with which a student can be eligible, thus reducing the potential pool of recipients. At the time of enactment this change was estimated to save \$23 million in the 2012–13 award year and \$389 million over the 10-year budget window. Limiting Pell recipients' lifetime limit to 12 semesters was estimated to save \$247 million in the 2012–13 award year and \$2,862 million over the 10-year budget window.

The elimination of the ACG and SMART grant programs were not expected to have a significant budget impact because they were expected to sunset in 2010–11 and that was reflected in the Department's budget baselines at the time.

### **Alternatives Considered**

No alternatives were considered for the revisions to the regulations included in this document because these changes implement changes to the HEA enacted by Congress, and the Department did not exercise discretion in developing these amendments.

### **Accounting Statement**

As required by OMB Circular A–4 (available at [www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf)), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers in constant 2017 dollars as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to financial aid recipients.

<sup>2</sup> Lucca, D., Nadauld, T. & Shen, K., July 2015, Credit Supply and the Rise in College Tuition: Evidence from the expansion in Federal Student Aid Programs, Federal Reserve Bank of New York.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES  
[In millions]

Category	Transfers	
	7%	3%
Annualized Monetized Transfers related to year-round Pell .....	\$1,407.5	\$1,436.4
Annualized Monetized Transfers related to minimum Pell award .....	– 28.4	– 30.1
Annualized Monetized Transfers related to 12 semester lifetime limit .....	– 248.0	– 254.6
From Whom to Whom? .....	From the Federal Government to financial aid recipients	

### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

### Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

We are removing OMB control numbers from certain regulations because they either are no longer necessary, or the applicable burden is now captured under a separate control number. OMB Control Number 1840–0536, “Pell Grant Program (Recordkeeping Requirements),” which we are removing from § 690.81 “Fiscal control and fund accounting procedures,” was disapproved on November 16, 1990. Section 690.81 cross references requirements for maintaining general fiscal records and general funds received in accordance with other sections of the Department’s regulations. Any burden associated with those requirements is accounted for under OMB control numbers associated with those other regulations.

OMB Control Number 1840–0681, “Federal Pell Grant Program, Information Collection Presidential Access Scholarship Program, Information Collection,” expired on December 31, 1997. It was associated with §§ 690.12, 690.13, and 690.82. The Presidential Access Scholarship Program is no longer active. Any burden associated with §§ 690.12 and 690.13 is captured under OMB Control Number 1845–0001, “Free Application for Federal Student Aid (FAFSA).” Section 690.82 cross-references record retention and examination provisions in § 668.24. Any burden associated with § 668.24 is accounted for under OMB Control Number 1845–0038.

OMB Control Number 1845–NEW5 was associated with an information collection in § 690.63(h), which was removed through a prior interim final rule (77 FR 25893, May 2, 2012) due to statutory changes. Therefore, we are

deleting the OMB control number from § 690.63, as the information collection request has been discontinued and is no longer applicable to that section.

### Intergovernmental Review

The Federal Pell Grant, ACG, and National SMART Grant programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Assessment of Educational Impact

Based on our own review, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

You may also view this document in text or PDF at the following site: [www.ifap.ed.gov/](http://www.ifap.ed.gov/).

(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grants; 84.375 Academic Competitiveness Grants; and 84.376 National Science and Mathematics Access to Retain Talent Grants.)

### List of Subjects

#### 34 CFR Part 604

Colleges and universities, Grant programs—education, Intergovernmental relations.

#### 34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

#### 34 CFR Part 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

**Miguel A. Cardona,**  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends parts 604, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

### PART 604 [Removed and Reserved]

- 1. Under the authority of 20 U.S.C. 1221e–3, part 604 is removed and reserved.

### PART 690—FEDERAL PELL GRANT PROGRAM

- 2. The authority citation for part 690 continues to read as follows:

**Authority:** 20 U.S.C. 1070a, 1070g, unless otherwise noted.

#### § 690.2 [Amended]

- 3. Section 690.2 is amended by:
  - a. In paragraph (b), removing the terms “Academic Competitiveness Grant (ACG) Program”, “Federal Family Education Loan (FFEL) Program”, “Federal Perkins Loan Program”, and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.



■ b. Removing the parenthetical authority citation at the end of the section.

■ 4. Section 690.6 is amended by:

■ a. Revising paragraph (e).

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

**§ 690.6 Duration of student eligibility.**

\* \* \* \* \*

(e) A student may receive no more than six Scheduled Awards, as determined by the Secretary.

\* \* \* \* \*

**§ 690.7 [Amended]**

■ 5. Section § 690.7 is amended by:

■ a. Removing paragraph (a).

■ b. Redesignating paragraphs (b) through (e) as paragraphs (a) through (d), respectively.

■ c. In newly redesignated paragraph (c)(1), removing the words “FFEL or” and adding the words “or N” after the words “subpart M”.

■ d. In newly redesignated paragraph (c)(2), removing the citation “668.187” and adding in its place the citations “668.187(d) or 668.206(d)”.

■ e. In newly redesignated paragraph (d)(1), adding the words “or for whom the institution obtained a valid ISIR” after the word “institution”.

■ f. Removing the parenthetical authority citation at the end of the section.

**§ 690.10 [Amended]**

■ 6. Section § 690.10 is amended by:

■ a. In paragraph (b), removing the words and punctuation “Federal Perkins Loan,”.

■ b. Removing the parenthetical authority citation at the end of the section.

**§ 690.12 [Amended]**

■ 7. Section § 690.12 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

**§ 690.13 [Amended]**

■ 8. Section § 690.13 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

**§ 690.14 [Amended]**

■ 9. Section § 690.14 is amended by:

■ a. In paragraph (c)(2), removing the citation “34 CFR 668.57” and adding in its place the citation “subpart E of part 668 of this chapter”.

■ b. Removing the parenthetical authority citation at the end of the section.

■ 10. Section 690.62 is revised to read as follows:

**§ 690.62 Calculation of a Federal Pell Grant.**

The amount of a student’s Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

■ 11. Section 690.63 is amended by:

■ a. Revising paragraphs (f) and (g).

■ b. Removing the parenthetical OMB control number and authority citation at the end of the section.

The revisions read as follows:

**§ 690.63 Calculation of a Federal Pell Grant for a payment period.**

\* \* \* \* \*

(f) *Calculating payments that exceed 50 percent of a student’s annual award.* A single disbursement may not exceed 50 percent of any award determined under paragraphs (d) and (g)(2) of this section. If a payment for a payment period calculated under paragraphs (d) and (g)(2) of this section would require the disbursement of more than 50 percent of a student’s annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student’s annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program’s academic year.

(g) *Additional Federal Pell Grant funds and defining an academic year.*

(1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and § 690.66, the amount of a student’s award for an award year may not exceed one and one-half of his or her Scheduled Federal Pell Grant award for that award year.

(2) A student’s payment for the payment period may include the remaining amount of the student’s Scheduled Award plus an amount from the additional Federal Pell Grant funds not to exceed one-half of a student’s Scheduled Award.

(3) For purposes of this section and § 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

\* \* \* \* \*

**§ 690.64 [Amended]**

■ 12. Section 690.64 is amended by:

■ a. In paragraph (b), adding the words “one and one-half of” after the words “more than”.

■ b. Removing the parenthetical authority citation at the end of the section.

**§ 690.65 [Amended]**

■ 13. Section 690.65 is amended by:

■ a. In paragraph (c), adding the words “one and one-half of” after the words “not exceed”.

■ b. In paragraph (d)(2), adding the words “or 150 percent, if the student is eligible to receive additional Federal Pell Grant funds in an amount up to one-half of a Scheduled Award during a single award year” after the words “100 percent”.

■ c. In paragraph (f), adding the punctuation and words “, or one and one-half of his or her Scheduled Federal Pell Grant, whichever is applicable” after the word “Grant”.

■ d. Removing the parenthetical authority citation at the end of the section.

■ 14. Section 690.67 is added to read as follows:

**§ 690.67 Eligibility to receive additional Federal Pell Grant funds in an amount up to one-half of a Scheduled Award during a single award year.**

An institution awards additional Federal Pell Grant funds up to one-half of a Scheduled Award to a student in an award year if the student is enrolled—

(a) In an eligible program leading to a bachelor’s or associate’s degree or other recognized educational credential, except as provided in 34 CFR part 668, subpart O, for students with intellectual disabilities, for one or more additional payment periods during the same award year that are not fully covered by the student’s initial Federal Pell Grant Scheduled Award; and

(b) At least as a half-time student in the payment period(s) for which the student receives any portion of the additional Federal Pell Grant funds.

**§ 690.81 [Amended]**

■ 15. Section 690.81 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

**§ 690.82 [Amended]**

■ 16. Section 690.82 is amended by removing the parenthetical OMB control number and authority citation at the end of the section.

**§ 690.83 [Amended]**

■ 17. Section 690.83 is amended by:

■ a. In paragraph (d)(2), removing the citation “34 CFR 668.23(c)” and adding



in its place the citation “34 CFR 668.23(b)”.

■ b. In the parenthetical OMB control number at the end of the section, removing the words “control number 1840–0688” and adding in their place the words “control number 1845–0039”.

■ c. Removing the parenthetical authority citation at the end of the section

## PART 691 [Removed and Reserved]

■ 18. Under the authority of 20 U.S.C. 1221e–3, part 691 is removed and reserved.

[FR Doc. 2021–23423 Filed 10–27–21; 8:45 am]

BILLING CODE 4000–01–P

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. 2020–11]

#### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Librarian of Congress adopts exemptions to the provision of the Digital Millennium Copyright Act (“DMCA”) that prohibits circumvention of technological measures that control access to copyrighted works. As required under the statute, the Register of Copyrights, following a public proceeding, submitted a recommendation concerning proposed exemptions to the Librarian of Congress (“Register’s Recommendation”). After careful consideration, the Librarian adopts final regulations based upon the Register’s Recommendation.

**DATES:** Effective October 28, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Kevin R. Amer, Acting General Counsel and Associate Register of Copyrights, by email at [kamer@copyright.gov](mailto:kamer@copyright.gov), or Mark Gray, Attorney-Advisor, by email at [mgray@copyright.gov](mailto:mgray@copyright.gov). Each can be contacted by telephone by calling (202) 707–8350.

**SUPPLEMENTARY INFORMATION:** The Librarian of Congress, pursuant to section 1201(a)(1) of title 17, United States Code, has determined in this eighth triennial rulemaking proceeding that the prohibition against circumvention of technological

measures that effectively control access to copyrighted works shall not apply for the next three years to persons who engage in certain noninfringing uses of certain classes of such works. This determination is based upon the Register’s Recommendation.

The below discussion summarizes the rulemaking proceeding and the Register’s recommendations, announces the Librarian’s determination, and publishes the regulatory text specifying the exempted classes of works. A more complete discussion of the rulemaking process, the evidentiary record, and the Register’s analysis with respect to each proposed exemption can be found in the Register’s Recommendation, which is posted at [www.copyright.gov/1201/2021/](http://www.copyright.gov/1201/2021/).

### I. Background

#### A. Statutory Requirements

Congress enacted the DMCA in 1998 to implement certain provisions of the WIPO Copyright and WIPO Performances and Phonograms Treaties. Among other things, title I of the DMCA, which added a new chapter 12 to title 17 of the U.S. Code, prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works. In enacting this aspect of the law, Congress observed that technological protection measures (“TPMs”) can “support new ways of disseminating copyrighted materials to users, and . . . safeguard the availability of legitimate uses of those materials by individuals.”<sup>1</sup>

Section 1201(a)(1) provides in pertinent part that “[n]o person shall circumvent a technological measure that effectively controls access to a work protected under [title 17].” Under the statute, to “circumvent a technological measure” means “to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.”<sup>2</sup> A technological measure that “effectively controls access to a work” is one that “in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.”<sup>3</sup>

Section 1201(a)(1) also includes what Congress characterized as a “fail-safe”

mechanism,<sup>4</sup> which requires the Librarian of Congress, following a rulemaking proceeding, to exempt any class from the prohibition for a three-year period if she has determined that noninfringing uses by persons who are users of copyrighted works in that class are, or are likely to be, adversely affected by the prohibition against circumvention during that period.<sup>5</sup> The Librarian’s determination to grant an exemption is based upon the recommendation of the Register of Copyrights, who conducts the rulemaking proceeding.<sup>6</sup> The Register consults with the Assistant Secretary for Communications and Information of the Department of Commerce, who oversees the National Telecommunications and Information Administration (“NTIA”), in the course of formulating her recommendations.<sup>7</sup>

Exemptions adopted by rule under section 1201(a)(1) apply only to the conduct of circumventing a technological measure that controls access to a copyrighted work. Other parts of section 1201 address the manufacture and provision of—or “trafficking” in—products and services designed for purposes of circumvention. Section 1201(a)(2) bars trafficking in products and services that are used to circumvent technological measures that control access to copyrighted works (for example, a password needed to open a media file),<sup>8</sup> while section 1201(b) bars trafficking in products and services used to circumvent technological measures that protect the exclusive rights of the copyright owner (for example, technology that prevents the work from being reproduced).<sup>9</sup> The Librarian has no authority to adopt exemptions for the anti-trafficking prohibitions contained in section 1201(a)(2) or (b).<sup>10</sup>

The statute contains certain permanent exemptions to permit specified uses. These include section 1201(d), which exempts certain activities of nonprofit libraries, archives, and educational institutions; section 1201(e), which exempts “lawfully authorized investigative, protective, information security, or intelligence activity” of a state or the federal

<sup>4</sup> See H.R. Rep. No. 105–551, pt. 2, at 36 (1998).

<sup>5</sup> See 17 U.S.C. 1201(a)(1).

<sup>6</sup> 17 U.S.C. 1201(a)(1)(C).

<sup>7</sup> *Id.*

<sup>8</sup> 17 U.S.C. 1201(a)(2).

<sup>9</sup> 17 U.S.C. 1201(b).

<sup>10</sup> See 17 U.S.C. 1201(a)(1)(E) (“Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.”).

<sup>1</sup> Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 6 (Comm. Print 1998).

<sup>2</sup> 17 U.S.C. 1201(a)(3)(A).

<sup>3</sup> 17 U.S.C. 1201(a)(3)(B).